

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Monroe Area Broadcasters, Inc.)	File No. EB-02-AT-092
)	NAL/Acct. No. 200232480009
Licensee of Station WRKQ(AM))	FRN 0003-7200-59
Madisonville, Tennessee)	

FORFEITURE ORDER

Adopted: April 3, 2003

Released: April 7, 2003

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* ("Order"), we issue a monetary forfeiture in the amount of nine thousand dollars (\$9,000) to Monroe Area Broadcasters, Inc. ("Monroe"), licensee of Station WRKQ(AM), Madisonville, Tennessee, for willful and repeated violation of Sections 73.44(b), 73.1201(a)(2) and 73.1745(a) of the Commission's Rules ("Rules").¹ The noted violations involve Monroe's failure to adequately attenuate WRKQ's transmission system emissions, failure to identify WRKQ by call sign, and operation of WRKQ at night with daytime power.

2. On June 27, 2002, the Commission's Atlanta, Georgia Field Office ("Atlanta Office") issued a *Notice of Apparent Liability for Forfeiture* ("NAL") to Monroe for a forfeiture in the amount of nine thousand dollars (\$9,000).² Monroe filed a response to the NAL on July 10, 2002.

II. BACKGROUND

3. On March 21, 2002, the Atlanta Office received two complaints alleging that WRKQ was not reducing power at sunset or identifying by call sign, and that WRKQ's transmitter had spurious emissions which were interfering with the reception of other stations, including the reception of WWV³ on 2.5 MHz. WRKQ is licensed to operate on frequency 1250 kHz. Its second harmonic of 2.5 MHz falls on WWV's authorized frequency of 2.5 MHz.

4. On May 14, 2002, an agent from the Atlanta Office monitored WRKQ's signal. WRKQ's authorization specifies daytime power of 500 watts and nighttime power of 84 watts. Field strength measurements taken by the agent indicated that WRKQ did not reduce power at sunset as

¹ 47 C.F.R. §§ 73.44(b), 73.1201(a)(2) and 73.1745(a).

² *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200232480009 (Enf. Bur., Atlanta Office, released June 27, 2002).

³ WWV is licensed to the National Bureau of Standards and is used for time synchronization.

required by the station authorization. Rather, WRKQ remained at daytime power all night. In addition, spectrum analyzer measurements of WRKQ's second harmonic on 2.5 MHz revealed that it was attenuated 55 dB below the unmodulated carrier level. Section 73.44(b) of the Rules requires attenuation of at least 70 dB for a 500 watt station. The agent also observed that the station failed to identify by call sign between 7:00 and 10:00 p.m.

5. On May 15, 2002, the agent again monitored WRKQ's signal. Field strength measurements taken by the agent indicated that WRKQ did not reduce power at sunset as required by the station authorization. Rather, WRKQ remained at daytime power all night. In addition, spectrum analyzer measurements of WRKQ's second harmonic on 2.5 MHz again indicated that it was attenuated 55 dB below the unmodulated carrier level.

6. On May 16, 2002, the agent inspected WRKQ. The agent spoke with WRKQ's station manager, Delbert Smith, who admitted that the station was operating with daytime power at night. Mr. Smith stated that the station had received oral authorization from an FCC employee to operate with daytime power at night, but that he had never received any written authorization to do so. The agent advised Mr. Smith that the transmitter's second harmonic was not adequately attenuated and that the station had failed to identify by call sign during a three-hour period on May 14, 2002.

7. On June 27, 2002, the Atlanta Office issued an *NAL* for a \$9,000 forfeiture to Monroe for failure to adequately attenuate WRKQ's transmission system emissions in willful and repeated violation of Section 73.44(b) of the Rules, failure to identify WRKQ by call sign in willful and repeated violation of Section 73.1201(a)(2) of the Rules, and operation of WRKQ at night with daytime power in willful and repeated violation of Section 73.1745(a) of the Rules. Monroe filed a response to the *NAL* on July 10, 2002. In its response, Monroe states that the Commission has granted its application to assign the license for WRKQ to Sloan Radio, Inc. ("Sloan"), but that Sloan did not have its financing in place to complete the purchase of the station.⁴ Monroe asserts that this situation has kept it from performing some preventive maintenance. In addition, Monroe states that Mr. Smith is "leasing" the station from Monroe,⁵ but that the station is in poor financial condition and Mr. Smith is doing the best he can to operate the station with limited financial resources. Monroe also provides a letter from Mr. Smith. Mr. Smith asserts that it would be unfair to impose a forfeiture for the Section 73.44(b) violation because he was unaware of the problem until informed of it by the FCC agent on May 16, 2002. Further, Mr. Smith states that he was unaware that written authorization from the FCC was required to operate the station at daytime power 24 hours per day and that he thought that the station had been identifying by call sign. Finally, Monroe indicates that all of the violations have been corrected.

III. DISCUSSION

8. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended, ("Act"),⁶ Section 1.80 of the Rules,⁷ and *The Commission's*

⁴ The Commission staff granted Monroe's application to assign the license for WRKQ to Sloan on February 26, 2002. File No. BAL-20020107AAB. This assignment has not been consummated.

⁵ We take no view at this point whether there may have been an unauthorized transfer of control of the station.

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. § 1.80.

Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) (“*Policy Statement*”). In examining Monroe’s response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸

9. Section 73.44(b) of the Rules requires that the emissions of an AM station that are removed by more than 75 kHz from the carrier be attenuated at least 43 + 10 Log (Power in watts) or 80 dB below the unmodulated carrier level, whichever is the lesser attenuation.⁹ Thus, WRKQ’s second harmonic on 2.5 MHz should be attenuated at least 70 dB below the unmodulated carrier level. On May 14 and 15, 2002, WRKQ’s second harmonic on 2.5 MHz was attenuated only 55 dB below the unmodulated carrier level. Mr. Smith asserts that it is unfair to impose a forfeiture for this violation because he was unaware of the problem until informed of it by the FCC agent on May 16, 2002. We disagree. As noted in the *NAL*, the Atlanta Office issued a Notice of Violation to Monroe on June 4, 1998 for failing to attenuate its second harmonic emissions in violation of Section 73.44(b). Moreover, licensees are expected to know and comply with the Commission’s rules.¹⁰ Section 73.44(a) of the Rules requires licensees to measure their emissions to ensure compliance with Section 73.44(b). In addition, Section 73.1590 of the Rules requires AM licensees to make measurements for spurious and harmonic emissions on an annual basis to demonstrate compliance with the transmission system requirements of Section 73.44.¹¹ Neither Monroe nor Mr. Smith offer any evidence that measurements were taken to ensure that WRKQ was in compliance with Section 73.44(b). Therefore, we conclude that Monroe willfully¹² and repeatedly¹³ violated Section 73.44(b) of the Rules.¹⁴

10. Section 73.1201(a)(2) of the Rules requires broadcast stations to identify by call sign hourly, as close to the hour as possible, at a natural break in programming. WRKQ failed to identify by

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ Failure of an AM station to attenuate its second harmonic emissions as required by Section 73.44(b) can result in interference to other stations.

¹⁰ *Sitka Broadcasting Company, Inc.*, 70 FCC 2d 2375, 2378 (1979), *citing Lowndes County Broadcasting Company*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Company*, 23 FCC 2d 868 (1970).

¹¹ 47 C.F.R. § 73.1590.

¹² Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful,’ ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

¹³ Section 312(f)(2) of the Act provides that “[t]he term ‘repeated,’ ... means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(2).

¹⁴ We note that Monroe, as licensee of WRKQ, is responsible for the violations cited in the *NAL* notwithstanding that Mr. Smith may be acting as Monroe’s agent. In this regard, licensees are responsible for the acts and omissions of their employees and contractors. *See Eure Family Limited Partnership*, 17 FCC Rcd 21861 (2002); *MTD, Inc.*, 6 FCC Rcd 34, 35 (1991); *Wagenvoord Broadcasting Co.*, 35 FCC 2d 361 (1972).

call sign during a three-hour period from 7:00 to 10:00 p.m. on May 14, 2002. Although Mr. Smith states that he thought the station was identifying by call sign, he offers no evidence of what, if any, steps were taken to ensure that WRKQ complied with the identification requirement. We accordingly conclude that Monroe willfully and repeatedly violated Section 73.1201(a)(2).

11. Section 73.1745(a) of the Rules provides that no broadcast station shall operate at times, or with modes or power, other than those specified in and made a part of the license. The license for WRKQ specifies 500 watts daytime power and 84 watts nighttime power. On May 14 and 15, 2002, WRKQ did not reduce power at sunset as required in its station authorization, but instead operated with daytime power all night. Mr. Smith maintains that he received oral authorization to operate WRKQ with daytime power all night and that he was not aware that written authorization from the FCC was required to operate the station at daytime power 24 hours per day. However, the Media Bureau's Audio Services Division has assured us that it does not grant oral authorizations for AM stations to operate with daytime power at night. Furthermore, Section 73.1745(a) clearly prohibits stations from operating at power other than that specified in and made part of the license and there is no dispute that Mr. Smith knew at what power the station was operating. Accordingly, we conclude that Monroe willfully and repeatedly violated Section 73.1745(a).

12. Monroe asserts that the station is in poor financial condition. However, as stated in the *NAL*, the Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Monroe provided no financial documentation with its response to the *NAL* and therefore we have no basis upon which to evaluate its ability to pay the forfeiture. Finally, although Monroe indicates that all of the violations have been corrected, the Commission has repeatedly stated that remedial actions taken to correct a violation are not mitigating factors warranting reduction of a forfeiture.¹⁵

13. We have examined Monroe's response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Policy Statement* as well. As a result of our review, we conclude that Monroe willfully and repeatedly violated Sections 73.44(b), 73.1201(a)(2) and 73.1745(a) of the Rules, and we find no basis to rescind or reduce the \$9,000 forfeiture proposed for these violations.

IV. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Section 503 of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,¹⁶ Monroe Area Broadcasters, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nine thousand dollars (\$9,000) for willful and repeated violations of Sections 73.44(b), 73.1201(a)(2) and 73.1745(a) of the Rules.

15. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the

¹⁵ See e.g., *AT&T Wireless Services, Inc.*, 17 FCC Rcd 21866, 21871 (2002); *Seawest Yacht Brokers*, 9 FCC Rcd 6099 (1994); *Station KGVN, Inc.*, 42 FCC 2d 258, 259 (1973).

¹⁶ 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

Act.¹⁷ Payment may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should reference NAL/Acct. No. 200232480009 and FRN 0003-7200-59. Requests for full payment under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹⁸

16. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by first class mail and certified mail return receipt requested to Monroe Area Broadcasters, Inc., P.O. Box 489, Madisonville, Tennessee 37354.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

¹⁷ 47 U.S.C. § 504(a).

¹⁸ See 47 C.F.R. § 1.1914.